

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of Rules I)
through XV pertaining to the Pharmacy)
Access Prescription Drug Benefit)
Program (Big Sky Rx))

NOTICE OF ADOPTION

TO: All Interested Persons

1. On December 22, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-365 pertaining to the public hearing on the proposed adoption of the above-stated rules relating to the pharmacy access prescription drug benefit, at page 2558 of the 2005 Montana Administrative Register, issue number 24.

2. The Department has adopted new rules I (37.81.101), II (37.81.104), IV (37.81.304), VI (37.81.310), VII (37.81.314), IX (37.81.322), X (37.81.326), XI (37.81.330), XII (37.81.334), XIII (37.81.338), XIV (37.81.342) and XV (37.81.346) as proposed.

3. The Department has adopted the following rules as proposed but with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE III (37.81.301) BIG SKY RX SCOPE AND PURPOSE (1) remains as proposed.

(2) An individual entitled to benefits under medicare Part A or enrolled in medicare Part B is eligible to enroll in a medicare Part D PDP. An individual enrolled in a PDP ~~pays a~~ is responsible for the premium and receives prescription drug coverage. There is also a federal premium subsidy called "~~s~~Social ~~s~~Security ~~e~~Extra ~~h~~Help" for some individuals that assists in paying co-payments, deductibles, and premiums.

(3) The purpose of Montana's ~~b~~Big ~~s~~Sky Rx ~~p~~Program is to pay a portion or all of the cost of the PDP premium for eligible Montana residents, ~~who have income at or below 200% of the FPL and do not qualify for federal automatic enrollment. A Montana resident who qualifies for the federal extra help program is eligible for big sky Rx benefit only to the extent needed to supplement the extra help benefit up to \$33.11 per month.~~

(4) and (5) remain as proposed.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-6-1001, 53-6-1004, 53-6-1005, MCA

RULE V (37.81.307) ELIGIBILITY FOR BIG SKY RX (1) through (3) remain as proposed.

(4) An individual who is ~~eligible~~ receiving benefits for medicaid is not eligible for the ~~Big sSky Rx pProgram~~.

(5) An individual ~~who the federal government automatically enrolled~~ in a LIS program with full premium subsidy is not eligible.

(6) through (10) remain as proposed.

AUTH: Sec. 53-2-201, 53-6-1004, MCA

IMP: Sec. 53-6-1001, 53-6-1004, 53-6-1005, MCA

RULE VIII (37.81.318) PROCESSING BIG SKY RX PARTICIPANT APPLICATIONS (1) through (8) remain as proposed.

(9) Qualified but incomplete applications will be marked "pending" until the applicant provides the PDP information and, if appropriate, the ~~sSocial sSecurity eExtra hHelp~~ determination and any missing application material.

(a) The applicant will be notified that the application is pending. The application will be held for 60 business days from the date of the notice. Following the 61st business day, a notice will be sent to the applicant ~~reminding him~~ as a reminder of the missing information.

(b) remains as proposed.

(10) Incomplete applications that are not otherwise qualified are considered "pending" by the department. These individuals will be notified of the missing information.

(a) A pended application will be held for ~~20~~ 30 business days waiting for missing information. If the missing information is received within the ~~20~~ 30 business days from the date of the notice, the application will be processed.

(b) Following the ~~24st~~ 31st business day the department will consider the application incomplete. The applicant becomes ineligible, and will be notified. The department will take no further action.

(11) through (13) remain as proposed.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-6-1001, 53-6-1004, 53-6-1005, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

COMMENT #1: The Department offered written testimony proposing revisions to Rules III (37.81.301), V (37.81.307), and VIII (37.81.318). The revisions are intended to clarify any ambiguity that may have existed in the text as proposed.

RESPONSE: The proposed changes to Rules III (37.81.301) and VIII(9) (37.81.318) are nonsubstantive changes to improve readability.

The Department is making two changes to Rule V (37.81.307). The phrase "An individual who is eligible for Medicaid is not eligible for the Big Sky Rx Program" is changed to "An individual who is receiving benefits for Medicaid is not eligible for the Big Sky Rx Program". An individual may be eligible for, but not receiving, Medicaid

benefits. That individual is eligible for Big Sky Rx benefits.

The phrase "who the federal government automatically enrolled" is being removed because it is irrelevant. An individual enrolled in a LIS program with full premium subsidy is not eligible for Big Sky Rx benefits regardless of whether he or she was automatically enrolled.

The Department is changing Rule VIII(10) (37.81.318) to extend from 20 to 30 the number of days the Department will hold an incomplete application open to receive additional information. This change is necessary because, upon further consideration, the Department determined that a 30 day holding period would not be an administrative difficulty and applicants needed additional time to gather necessary information.

COMMENT #2: The following comment was received regarding Rule VI (37.81.310). "What about the applicant who is living out of wedlock? Is their partner's income taken into consideration? If not, is not this an unfair marriage penalty?"

RESPONSE: Rule VI (37.81.310) states the criteria used to determine eligibility for Big Sky Rx benefits. The Department is using the same income and household size as the Federal government uses to determine eligibility for the Social Security Extra Help Program. Both programs are intended to help senior citizens with low incomes and disabled people with low incomes pay the premium for pharmaceutical drug insurance coverage provided by Medicare Part D.

An applicant self-reports his or her status as either single or married. The applicant's eligibility depends on his or her household income being at or below 200% of the federal poverty level (FPL). Married couples who live together have a household size of two. A household of two is eligible if the household income is less than \$25,660. Two single people who live together and are not related do not meet the definition of household. Each person has a household size of one. Each person must have income below \$19,140, not \$25,660, to be eligible.

COMMENT #3: The following comment was received regarding Rule VI (37.81.310). A commentor asked if a parent/guardian must include in his or her income the social security benefits he or she receives on behalf of a minor.

RESPONSE: No. This would not be the parent/guardian's income and would not affect his or her eligibility.

5. These rule changes will be applied retroactively to November 1, 2005.

/s/ Dawn Sliva
Rule Reviewer

/s/ John Chappuis
Director, Public Health and
Human Services

Certified to the Secretary of State January 30, 2006.